DOCUMENT RESUME

ED 200 548 SP 017 809

AUTHOR Pell, Sarah W. J.
TITLE School Law: A Generic Competency For Teachers.
PUB DATE 81
NOTE 9p.

EDRS PRICE MF01/PC01 Plus Postage.
DESCRIPTORS Administrator Responsibility; *Court Litigation; Discipline; *Educational Malpractice; Legal Education; *Legal Responsibility; Parent School Relationship; Postsecondary Education; *School Law; *Teacher Education; *Teacher Responsibility

ABSTRACT

Legal action against schools and school personnel on behalf of students has increased well over two hundred percent in the past five years. Court litigation concerning educational malpractice has become a reality. Legislative action in many states has negated protection from litigation for the individual teacher or administrator. In light of this current trend, it is imperative that teacher education include basic tenets of the legal responsibilities for the profession in its preservice training and, in addition, provide inservice training for teachers in the field. The issues that should be included in an education course on school law are outlined, and some typical examples of educational malpractice litigation are cited. (JD)

****
* Reproductions supplied by EDRS are the best that can be made *
* from the original document. *
****

ED200548

School Law: A Generic Competency For Teachers

What would you do as a teacher?

You have an exact description and name of a student in class who is reported to be carrying and distributing Quaaludes. Peggy with two of her girlfriends have "spiked" the fruit punch at the school dance. An underground student newspaper advertises drug paraphernalia. Miss Bannister, student, attends school in tight French jeans and a virtually transparent blouse. A boy is seriously injured by rock-throwing students on his way home from school. You are asked by a mother to transport her ill child to the local hospital in your car.

These instances are real. In each situation lengthy litigation was instituted by contending parties. In all cases huge expenses of legal representation were carried by teacher or district. In some cases the courts held teachers liable for their actions, and, indeed, in one case insurance coverage was voided by the court.

In what he has termed "the post-Watergate mentality", Thomas Shannon has pointed out that suits against schools and their personnel have increased well over two hundred percent in the last five years. Society is challenging all its major, traditional institutions. Medical malpractice suits have raised the friendly-family-physician's insurance to a point where the Drs. Christian and Marcus Welby can no longer bear the cost, and, in some cases, as Nevada, have become self-insurors or dropped malpractice insurance. Even the Catholic church and other religious groups have been asked by laity for an accounting of holdings. The

SP 017 809

U.S. DEPARTMENT OF EDUCATION
NATIONAL INSTITUTE OF EDUCATION
EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)

✓ This document has been reproduced as received from the person or organization originating it.

☐ Minor changes have been made to improve reproduction quality.

• Points of view or opinions stated in this document do not necessarily represent official NIE position or policy.

"PERMISSION TO REPRODUCE THIS MATERIAL HAS BEEN GRANTED BY

Sarah W.J. Pell

TO THE EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)."

school person is no exception: educational malpractice is a reality.

Over half the states of the nation have negated by legislative action the principle of "soverign immunity" or respondent superior. This provision, respondent superior, provides some protection from litigation for the individual teacher or administrator in that liability for action is shared with the state or with a governing body, such as the school board. With the waiver of soverign immunity laws each individual within the school setting may be held liable for their actions whether in tort or in violation of statutory or Constitutional law.

Our young teachers usually go forth to become professional with all good intent: to teach, to counsel, to help and to properly supervise youths in their charge. But, such is the disposition of the parents and the courts that the teacher - as any other citizen - can no longer plead "ignorance of the law." It is catagorically imperative that teacher education include basic tenets of the legal responsibilities of the profession in its preservice training, and, in addition, provide inservice training for those educators who began teaching in the more halcyon days when the principal and the teacher could never have been considered to "practice malvolenty."

What issues should be included in teacher education? Certainly, a "special interest pleader" for a legal education, would have to list the following areas as critical:

- Compulsory attendance
- Pupil discipline and control
- Out-of-school activities, as field trips and sports

- Corporal punishment
- Suspension and expulsion
- Status of married or pregnant pupils
- Promotion, retention and assignment of marks to pupils
- Tort-liability of teachers
- Required supervisory activities
- Teacher rights and responsibilities
- Contracts and collective bargaining
- The scope of negotiations
- Reduction in force
- Pupil injuries in classroom, playground, shop, laboratory; driver education, physical education, to and from school and on field trips
- Freedom of speech guarantees for teacher and pupil
- First Amendment guarantees in school newspaper and yearbook
- Due process guarantees.

Such a list is counted as basic or essential by noted educators and attorneys as M. Chester Nolte, Robert L. Drury and Kenneth Ray.

In this brief presentation, it would be impossible to point out the necessity, practicality and beneficiality of each area as a critical offering in the education of a teacher. One can, however, extrapolate the importance of the legal area by examining a few areas and several cases in a cause-effect mode.

Louis Husser, high school student, was "accosted, assaulted and seriously beaten at the end of day's classes." This situation was not unique in this Pennsylvania high school. All school officials and teachers knew about gang attacks upon students. Although the Supreme Court of Pennsylvania (1965) affirmed the principle of respondent superior, famed Justice Musmanno, in dissenting, sounded a clarion call - frequently heard today --

> "If the defendant school district had permitted a Bengal Tiger to roam the school yard of Schenley High School, and the minor plaintiff, Louis Husser, Jr., had been mangled by that savage beast, I cannot believe that the Majority of this Court would say that the defendant would not be guilty of neglect in allowing such a peril to life and limb to exist ... This injustice /of lack of redress/ cannot endure forever. I am satisfied that the day will arrive, and it cannot be far off, when people will laugh at solemn decisions of the courts of law which declare that everybody is responsible for his civil wrongs at law, - everybody but the government . . . To say that anyone injured by the government cannot sue the government is like saying that a ship built by certain individuals may transport anyone but the builders . . ."

Thus Justice Musmanno foretold the general court opinions from 1965 to the present. Increasingly, individuals are liable.

When one considers the indivuals involved, all too often the teachers "front line troops" are the potential objects of litigation.

Consider Edward Donohue. Edward sought five million dollars in damages because he received failing grades and lacked reading and writing skills. The student alleged that teachers, over time, failed in their duty. Donohue outlined the responsibility due him:

1. Evaluate his ability and capacity to comprehend what was taught
2. Interview him; test him, and discuss with him his ability to comprehend subject matter
3. Provide and assign him to teachers able to ascertain his capability and intelligence
4. Teach him! (emphasis added)
5. Supervise him! (emphasis added)
6. Advise his parents of his difficulties and suggest remedial and/or psychiatric help.
7. Do not use educational processes inappropriate to the student.

How many teachers have an Edward in their classrooms? How many teachers can answer truthfully that they have met the educational malpractice challenges as voiced in Donohue?

A first-year physical education teacher, as well as the building principal, were held liable, as was the district, in a decision awarding over one million dollars to an eighth grade student. The student suffered severe neck injuries that rendered him a quadraplegic. The young teacher had failed to follow a correct instructional sequence and to exercise proper supervision.

What implications are there for teacher educators in such a litany of litigation? The mandate is clear. Teachers must not only know the proper way to facilitate a teaching-learning situation, to diagnose student needs and prescribe proper instruction, and must recognize the duty to constantly supervise youths in their charge, but they must also know the consequences of their actions. The modification in teacher behavior cannot come after the fact by the aversive actions of the courts.

Woven into a teacher's education should be, minimally, some dicta, or catch-phrases of the judicial system:

- misfeasance: doing the wrong thing
- malfeasance: doing a bad thing
- nonfeasance: not doing anything when action was warranted.

The teacher must act as any "wise and prudent" person with equal training would do. The teacher must possess certain qualities just short of being a soothsayer, specifically - foreseeability of results of potential student actions or teacher actions.

In sum, therefore, society and the judicial system, the demand for accountability from our traditional institutions and the changes in state laws tends to suggest that the teacher enter the school room armed with basic legal principles regarding their responsibilities. This education, it would seem, would be wisely within the purview of teacher educators - and not the Judge of the Courts.

BIBLIOGRAPHY

Drury, Robert L. and Ray, Kenneth C., Essentials of School Law. New York: Appleton - Century - Crofts. 1967

Hazard, William R., Education and the Law (2nd), New York: Free Press. 1978

McGehey, M.A. (Ed.) Contemporary Legal Issues in Education, Topeka, Kansas; National Organization on Legal Problems of Education (1979)

School Law In Contemporary Society, Topeka, Kansas; National Organization on Legal Problems of Education (1980)

Nolte, M. Chester, Guide to School Law, West Nyack, New York: Parker Publishing Company 1969

Piele, Philip K. (Ed) Yearbook of School Law 1980, Topeka, Kansas: N.O.L.P.E. (1980)